IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

THE UNITED STATES OF AMERICA, For the use and benefit of NETPLANNER SYSTEMS, INC.,	)	
Plaintiff,	)	
v.	)	**CASE NO.** 4:16-cv-150 (CDL)
GSC CONSTRUCTION, INC., and LIBERTY MUTUAL INSURANCE COMPANY,	)	
Defendants.	)	

NETPLANNER SYSTEMS, INC.'S COMPLAINT

Plaintiff Netplanner Systems, Inc. ("NetPlanner"), by and through its undersigned counsel, files this Complaint for damages against Defendants GSC Construction, Inc. ("GSC") and Liberty Mutual Insurance Company ("Liberty Mutual"), respectfully alleging as follows:

I. The Parties

1. Plaintiff NetPlanner is a corporation organized and existing under the laws of Georgia with its principal place of business located at 3145 Northwoods Parkway, Suite 800, Norcross, Georgia 30071. NetPlanner is in the business of providing high quality network cabling solutions.

2. Defendant GSC is a corporation organized and existing under the laws of Georgia with its principal place of business located at 2083 Heckle Street, Augusta, Georgia 30904. GSC may be served on its Registered Agent, Locke McKnight, 928 Johns Road, Augusta, Georgia 30904. GSC is a design/build contractor on construction projects.

3. Defendant Liberty Mutual is an insurance and surety company organized and existing under the laws of Massachusetts with its principal place of business located at 175 Berkeley St., Boston, Massachusetts 02116-5066. Liberty Mutual is authorized to do business in Georgia and can be served upon its Registered Agent, Corporation Service Company, 40 Technology Parkway Southsuite 300, Norcross, Georgia 30092.

II. Jurisdiction and Venue

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and the provisions of the Miller Act, 40 U.S.C. § 3133(b). The Court has supplemental jurisdiction over the state law claims for breach of contract and recovery of attorneys' fees pursuant to 28 U.S.C. §1367.

5. The Defendants are corporations doing business presently or in the past in the State of Georgia, thus subjecting them to the personal jurisdiction of this Court.

6. Venue is proper in this Court, and all prerequisites to bringing this action have been satisfied.

III. The Fort Bragg Project

7. By agreement dated November 16, 2012, NetPlanner entered into a contract with GSC to furnish labor, materials, equipment and services in connection with the construction and design of the SOF Communications Training Facility located at Fort Bragg, North Carolina for $296,074.00 (the "Fort Bragg Project"). A true and correct copy of this agreement is attached at Exhibit A and incorporated herein by reference (the "Fort Bragg Contract").

8. More specifically, Section 8.1 of the Fort Bragg Contract stated NetPlanner "will supply all labor, materials, supervision and equipment per the RFP requirements, amendments and revisions to complete all communications/low voltage items within and outside of 5' of the building. The scope of work includes, but is not limited to, Section 01 11 05 complete, and all applicable appendices. Subcontractor recognizes that the amount of this subcontract will not increase unless the Government changes the RFP scope of work at which time a change order will be issued."

9. The Owner of the Fort Bragg Project is the United States Army Corps of Engineers, located at Wilmington District, 69 Darlington Avenue, Wilmington, North Carolina 28403-1343.

10. NetPlanner's work on the Fort Bragg Project commenced in or around the first quarter of 2014, and the work was timely completed in or around May 2015.

11. During the course of the Fort Bragg Project, GSC directed NetPlanner to perform additional work beyond the initial scope of work in the Fort Bragg Contract. NetPlanner performed this additional work at the direction of, and to the benefit of, GSC.

12. GSC issued a total of two (2) change orders in the cumulative amount of $4,044.28, which increased the Fort Bragg Contract price to $300,118.28.

13. Despite the fact NetPlanner timely completed its work, GSC failed and refused to pay NetPlanner for amounts owed for base contract work performed, as well as amounts owed for the two (2) change orders. In total, GSC is wrongfully withholding $40,719.98 in contractual funds due and owing to NetPlanner for work performed.

14. Upon information and belief, GSC has been paid in full for NetPlanner's services on the Fort Bragg Project. Nonetheless, GSC has failed to pay NetPlanner for work completed despite such payments being due and payable.

15. GSC's repeated and continued failure to pay all amounts owed to NetPlanner for work performed on the Fort Bragg Contract, despite demands made by NetPlanner, has severely impacted NetPlanner.

16. The outstanding contract balance owed by GSC to NetPlanner for the Fort Bragg Project is $40,719.98.

IV. The Fort Benning Project

17. By agreement dated December 11, 2013, NetPlanner entered into a contract with GSC to furnish labor, materials, equipment and services in connection with the construction and design of project for the Rip Rope Buildings 2833 & 2834 located at Fort Benning, Georgia for $690,000.00 (the "Fort Benning Project"). A true and correct copy of this agreement is attached at Exhibit B and incorporated herein by reference (the "Fort Benning Contract").

18. More specifically, Section 8.1 of the Fort Benning Contract stated NetPlanner will:

> provide all labor, material and equipment for the cable TV system, PDS for SPIRnet, building telecom, intrusion detection, electronic security, CCTV, audio visual system, and access control. NetPlanner will be the Registered Comm Cable Distributor (RCDD) . . . . There will be no change orders issued unless the scope of work from the RFP and the Issued for Construction documents are changed by the Government. This is a turn-key scope of work, and will follow these specification sections:

27 05 14.00 10 CATV Premises Distribution System
27 05 29.00 10 PDS for SPIRnet Communications System
27 10 00 Building Telecom Systems
28 16 00.00 20 Basic Intrusion Detection Systems
28 20 01.00 10 Electronic Security Systems
28 23 23.00 10 CCTV Systems
Audio Visual Systems
Access Control

19. The Owner of the Fort Benning Project is the USA Engineer District Savannah, located at 100 W. Oglethorpe Avenue, Savannah, Georgia 31401-3640.

20. NetPlanner's work on the Fort Benning Project commenced in or around the first quarter of 2014, and the work was timely completed on or around April 30, 2015.

21. During the course of the Fort Benning Project, GSC directed NetPlanner to perform additional work beyond the initial scope of work in the Fort Benning Contract. NetPlanner performed this additional work at the direction of, and to the benefit of, GSC.

22. GSC issued a total of six (6) change orders in the cumulative amount of $27,323.63, which increased the Fort Benning Contract price to $717,323.63.

23. To date, GSC has paid NetPlanner a total amount of $645,591.27 for work performed on the Fort Benning Project.

24. Despite the fact NetPlanner timely completed its work, GSC has failed and refused to pay NetPlanner for additional amounts owed for base contract work

performed, as well as amounts owed for the six (6) change orders. In total, GSC is wrongfully withholding $71,732.36 in contractual funds due and owing to NetPlanner for work performed.

25. Upon information and belief, GSC has been paid in full for NetPlanner's services on the Fort Benning Project. Nonetheless, GSC has failed to pay NetPlanner for work completed despite such payments being due and payable.

26. GSC's repeated and continued failure to pay all amounts owed to NetPlanner for work performed on the Fort Benning Contract, despite demands made by NetPlanner, has severely impacted NetPlanner.

27. The outstanding contract balance owed by GSC to NetPlanner for the Fort Benning Project is $71,732.36.

FIRST CAUSE OF ACTION
(Breach of Contract – Fort Bragg Contract)

28. NetPlanner incorporates by reference all preceding paragraphs of this Complaint.

29. The Fort Bragg Contract constitutes a binding and enforceable contract between NetPlanner and GSC.

30. GSC has materially breached the Fort Bragg Contract by (a) failing and refusing to pay all amounts owed to NetPlanner under the Fort Bragg Contract for work performed, including amounts for base work performed as well as amounts for

change orders issued pursuant to which additional work was performed; (b) breaching the covenant of good faith and fair dealing implied in such contract, and (c) such other ways as may be revealed during discovery in this action.

31. As a direct, proximate, and foreseeable result of the material breaches of the Fort Bragg Contract by GSC, NetPlanner has incurred damages approximating $40,719.98, plus interest at the statutory rate and any additional amounts that may be proved at a trial or hearing. Also as a result of GSC's material breach of the Fort Bragg Contract, NetPlanner has been required to retain the undersigned counsel to represent it in this matter and incur attorneys' fees and other litigation/arbitration costs and expenses.

32. NetPlanner has performed all conditions precedent required by the Fort Bragg Contract and is entitled to recover the full amount of damages incurred as a direct and foreseeable result of GSC's material breach of the Fort Bragg Contract.

SECOND CAUSE OF ACTION
(Breach of Contract – Fort Benning Contract)

33. NetPlanner incorporates by reference all preceding paragraphs of this Complaint.

34. The Fort Benning Contract constitutes a binding and enforceable contract between NetPlanner and GSC.

35. GSC has materially breached the Fort Benning Contract by (a) failing and refusing to pay all amounts owed to NetPlanner under the Fort Benning Contract for work performed, including amounts for base work performed as well as amounts for change orders issued pursuant to which additional work was performed; (b) breaching the covenant of good faith and fair dealing implied in such contract, and (c) such other ways as may be revealed during discovery in this action.

36. As a direct, proximate, and foreseeable result of the material breaches of the Fort Benning Contract by GSC, NetPlanner has incurred damages approximating $71,732.36, plus interest at the statutory rate and any additional amounts that may be proved at an trial or hearing. Also as a result of GSC's material breach of the Fort Benning Contract, NetPlanner has been required to retain the undersigned counsel to represent it in this matter and incur attorneys' fees and other litigation/arbitration costs and expenses.

37. NetPlanner has performed all conditions precedent required by the Fort Benning Contract and is entitled to recover the full amount of damages incurred as a direct and foreseeable result of GSC's material breach of the Fort Bragg Contract.

THIRD CAUSE OF ACTION
(Quantum Meruit – Fort Bragg Project)

38. NetPlanner incorporates by reference all preceding paragraphs of this Complaint.

39. NetPlanner provided work in connection with the Fort Bragg Project, including labor, materials, equipment and services.

40. NetPlanner provided such work at the direction of, to the knowledge of, and to the benefit of, GSC.

41. NetPlanner completed its work on the Fort Bragg Project, and GSC accepted the same. However, GSC failed and refused to fully compensate NetPlanner for work performed.

42. It would be inequitable for GSC to gain the benefit of such work without properly compensating NetPlanner for the same.

43. Accordingly, NetPlanner is entitled to reasonable compensation for work performed on the Fort Bragg Project in an amount to be determined at a trial or hearing.

FOURTH CAUSE OF ACTION
(Quantum Meruit – Fort Benning Project)

44. NetPlanner incorporates by reference all preceding paragraphs of this Complaint.

45. NetPlanner provided work in connection with the Fort Benning Project, including labor, materials, equipment and services.

46. NetPlanner provided such work at the direction of, to the knowledge of, and to the benefit of, GSC.

47. NetPlanner completed its work on the Fort Benning Project, and GSC accepted the same. However, GSC failed and refused to fully compensate NetPlanner for work performed.

48. It would be inequitable for GSC to gain the benefit of such work without properly compensating NetPlanner for the same.

49. Accordingly, NetPlanner is entitled to reasonable compensation for work performed on the Fort Benning Project in an amount to be determined at a trial or hearing.

FIFTH CAUSE OF ACTION
(Miller Act Payment Bond Claim Against Liberty Mutual and GSC)

50. NetPlanner incorporates by reference all preceding paragraphs of this Complaint.

51. As an entity having a direct contractual relationship with GSC that has expended materials, equipment, tools, labor, and services to improve the Fort Bragg Project and Fort Benning Project, NetPlanner is a proper claimant under the Bonds issued by Liberty Mutual for the Fort Bragg Project and Fort Benning Project.

52. Because NetPlanner was not paid for all of the materials, equipment, tools, labor and services it furnished for the Fort Bragg Project pursuant to the Fort Bragg Contract, and for Fort Benning Project pursuant to the Fort Benning Contract, and under the circumstances described herein relating to the work performed,

NetPlanner provided notice of its claim under the Bonds in accordance with any statutory requirements of the Miller Act and Georgia Little Miller Act and submitted a Proof of Claim for the amounts owed on each project. True and correct copies of the two Proofs of Claim are attached hereto as Exhibit C and incorporated herein by reference.

53. Liberty Mutual, as obligor, and GSC, as Principal on the Payment Bonds, are jointly and severally obligated pursuant to the Bonds to pay NetPlanner for the materials, equipment, tools, labor and services it furnished for the Fort Bragg Project and the Fort Benning Project, and for which GSC has failed to make payment. Upon information and belief, GSC has been paid for all work performed by NetPlanner on the Fort Bragg Project and Fort Benning Project.

54. Liberty Mutual and GSC have refused to honor their outstanding obligations to NetPlanner under the Fort Bragg Contract and Fort Benning Contract, and more than 90 days but less than 365 days have elapsed from the day on which NetPlanner last performed labor or last furnished materials. As a result thereof, NetPlanner has been compelled to commence this action. NetPlanner is entitled to recover from GSC and Liberty Mutual under the Bonds a sum to be determined at trial for unpaid work performed under the Fort Bragg Contract and Fort Benning Contract, up to the penal sums identified on the Bonds and including interest. As

part of its recovery under its Miller Act claim, NetPlanner is seeking to recover its attorneys' fees as a result of Liberty Mutual's bad faith and stubborn litigiousness which has caused NetPlanner unnecessary trouble and expense.

55. Alternatively, NetPlanner claims the sum of approximately $111,952.33 as being owed by GSC and Liberty Mutual, jointly and severally, under the terms of the Bonds, as non-statutory bonds, in the event it is determined the Bonds are not subject to or issued pursuant to the Miller Act or Georgia's Little Miller Act.

SIXTH CAUSE OF ACTION
(Attorneys' Fees and Costs Pursuant to O.C.G.A. § 13-6-11)

56. NetPlanner incorporates by reference all preceding paragraphs of this Complaint.

57. Despite NetPlanner's repeated requests for payment for work performed under its agreements with GSC, as well as extra, additional and supplementary work performed at the direction of GSC, GSC and Liberty Mutual have failed and refused to pay all contractual amounts owed to NetPlanner for work performed on the Fort Bragg Project and Fort Benning Project.

58. In so doing, GSC and Liberty Mutual have acted in bad faith, have been stubbornly litigious, and have caused NetPlanner unnecessary trouble and expense.

WHEREFORE, NetPlanner prays for the following:

(a) An award in favor of NetPlanner and against GSC on each claim asserted against GSC in this Complaint, including interest;

(b) An award in favor of NetPlanner and against Liberty Mutual on each claim asserted against Liberty Mutual in this Complaint, including interest;

(c) An award to NetPlanner for its litigation expenses, including reasonable attorneys' fees, expert fees and costs for this matter; and

(d) An award for such other and further relief as the Court deems just, equitable and proper.

Respectfully submitted, this 20th day of April, 2016.

/s/ David C. King
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